

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Neville Mahadeo

v.

Civil No. 08-cv-00053-JL

NH State Prison, Warden

O R D E R

Although Judge Muirhead preliminarily ruled that the petitioner, Neville Mahadeo, had exhausted his remedies with respect to claim #4 (see Order, doc. no. 5, n.2), the Warden correctly points out--albeit in the context of a procedural default argument--that he has not. (Warden's Summary Judgment Memorandum, doc. no. 11-2, p. 16).

I will give the petitioner the opportunity to amend his complaint to demonstrate exhaustion of the claim for which exhaustion has not yet been demonstrated and the federal nature of that claim. To that end, petitioner is directed that, within 21 days of the date of this Order, he must:

1. Amend his petition to demonstrate that the claim, including the federal nature of the claim, has in fact been exhausted; or, if the claim has not yet been exhausted,
2. Move to stay this action so that petitioner may return to the state courts to exhaust the unexhausted claim. If

petitioner elects to stay this action and return to the state courts to complete exhaustion, he must file his state court action within thirty days of the date of this Order. While this matter is stayed, petitioner must notify this Court of the status of his state court matter every 90 days. Once the New Hampshire Supreme Court has issued a final decision, petitioner must so notify this Court within 30 days of that decision, providing this Court, at that time, with complete copies of documents filed in the state courts demonstrating that the claim, including the federal nature of the claim, has been raised and exhausted. Petitioner should also provide this Court with complete copies of any orders or opinions issued by the state courts relative to the claim.

Should petitioner fail to amend his petition as directed, or otherwise fail to comply with this Order, the petition may be dismissed for failure to demonstrate exhaustion.¹ See 28 U.S.C. § 2254(b).

¹If this petition were to be dismissed for failing to demonstrate exhaustion, the dismissal would be without prejudice as it would be procedural, and not based on the merits of petitioner's claim. See Slack v. McDaniel, 529 U.S. 473 (2000).

SO ORDERED.



Joseph N. Laplante
United States District Judge

Date: June 29, 2009

cc: Neville Mahadeo, pro se
Stephen D. Fuller, Esq.
Susan P. McGinnis, Esq.